

Internal Revenue Service

Number: **200847013**

Release Date: 11/21/2008

Index Number: 1362.04-00

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:02

PLR-126924-08

Date:

August 01, 2008

LEGEND:

Dear :

This responds to a letter dated June 11, 2008, submitted on behalf of X by its authorized representative, requesting a ruling under § 1362(f) of the Internal Revenue Code (the Code).

X made an election to be treated as an S corporation. X's election was inadvertently terminated effective D1 because X's stock was transferred to Partnership 1, an ineligible S corporation shareholder, on that date. X's election would have inadvertently terminated effective D2 had it not already terminated, because X's stock was transferred to Partnership 2 on that date. On D3, Partnership 1 distributed its X stock to its individual partners. On D4, Partnership 2 transferred its X stock to Trust, which the taxpayer has represented as being eligible to make an electing small business trust election. X represents that the termination was not motivated by tax avoidance or retroactive tax planning. X and its shareholders have agreed to make any adjustments that the Commissioner may require, consistent with the treatment of X as an S corporation.

Section 1362(f) provides that if (1) an election under § 1362(a) by any corporation (A) was not effective for the taxable year for which made (determined without regard to § 1362(b)(2)) by reason of a failure to meet the requirements of § 1361(b) or to obtain shareholder consents or (B) was terminated under § 1362(d)(2) or (3), (2) the Secretary determines that the circumstances resulting in the ineffectiveness or termination were inadvertent, (3) no later than a reasonable period of time after discovery of the circumstances resulting in the ineffectiveness or termination, steps were taken (A) so that the corporation is a small business corporation or (B) to acquire the shareholder consents, and (4) the corporation and each person who was a shareholder of the corporation at any time during the period specified pursuant to § 1362(f), agrees to make such adjustments (consistent with the treatment of the corporation as an S corporation) as may be required by the Secretary with respect to such period, then, notwithstanding the circumstances resulting in the ineffectiveness or termination, the corporation will be treated as an S corporation during the period specified by the Secretary.

Based solely on the facts submitted and the representations made, we conclude that the termination of X's S corporation election on D1 was inadvertent within the meaning of § 1362(f). We further conclude that X's S election would have inadvertently terminated within the meaning of § 1362(f) on D2. Pursuant to the provisions of § 1362(f), X will be treated as continuing to be an S corporation from D1 and thereafter, provided X's S corporation election was valid and provided that the election was not otherwise terminated under § 1362(d).

Except as specifically ruled above, we express no opinion concerning the federal tax consequences of the transactions described above under any other provisions of the Code. This ruling is directed only to the taxpayer that requested it. Section 6110(j)(3) provides that it may not be used or cited as precedent. Pursuant to a power of attorney on file, a copy of this letter is being sent to X's authorized representative.

Sincerely,

Bradford R. Poston
Senior Counsel, Branch 2
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures: 2
Copy of this letter
Copy for § 6110 purposes

cc: